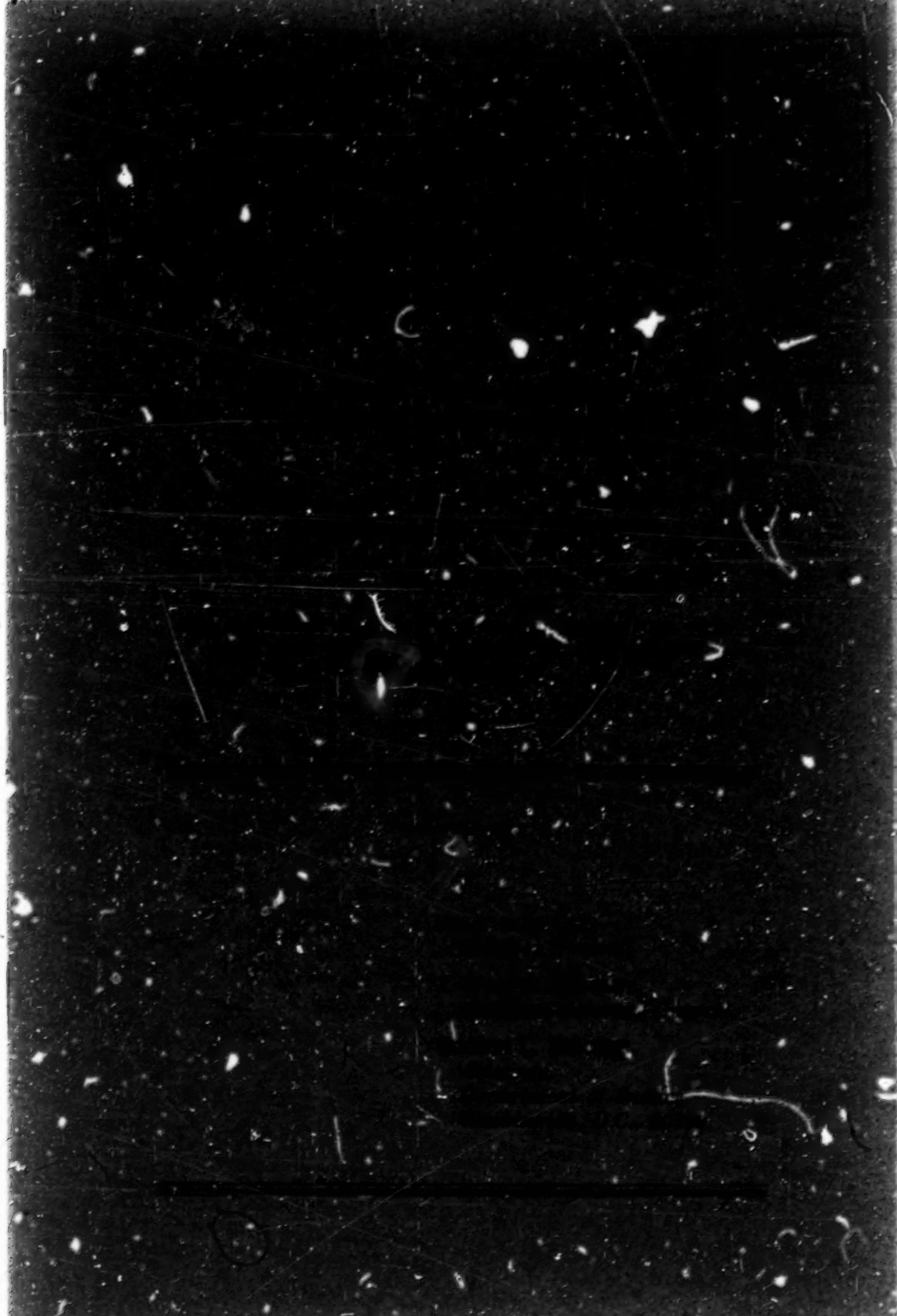

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 376

IVAN DMITRIEVICH EGOROV, AND
ALEKSANDRA EGOROVA, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the United States Court of Appeals for the Second Circuit (Pet. App. 38-40) has not yet been reported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 41-44) was entered on July 16, 1963. The petition for a writ of certiorari was filed on August 15, 1963.

The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, in the circumstances of this case, involving a capital offense, petitioners were required to be admitted to bail.

STATEMENT

On July 2, 1963, the petitioners were arrested at Flushing, Long Island, pursuant to a warrant issued by a United States Commissioner on the basis of a sworn complaint charging them with conspiracy to commit espionage in violation of 18 U.S.C. 794(a). They were arraigned the same day before the Commissioner and held without bail pending a preliminary hearing. On July 5, 1963, the district court (Judge Rayfiel), after hearing, denied bail. While an appeal from that order was pending before the Court of Appeals for the Second Circuit, these petitioners and two others were indicted on July 15, 1963, by a federal grand jury in the Eastern District of New York (Pet. App. 38-40). Count I charged a conspiracy to commit espionage, and Count II charged a conspiracy to violate 18 U.S.C. 951, which prohibits acting as an agent of a foreign government without having notified the Secretary of State. Both conspiracies are alleged to have existed since March 1957 and to have taken place in the United States and the Soviet Union. Count I charged, among other things, that the petitioners conspired to transmit to the Soviet Union information relating to

the national defense of the United States "and particularly information relating to military installations, rocket launching sites, naval installations, troop movements, ship movements, shipments of military supplies and atomic weapons, shipyards and military waterfront facilities" (Pet. App. 47).

On July 16, 1963, the court of appeals, after oral argument, affirmed the denial of bail (Pet. App. 38-44). An application for bail was denied by Mr. Justice Harlan on August 11, 1963 (Pet. App. 45), and on August 17, 1963, he denied a renewed bail application. On September 5, 1963, the Chief Justice denied the application.

The pertinent facts may be summarized as follows: Mr. Egorov and his wife are both citizens of the Soviet Union. They entered this country in October 1960 under a diplomatic passport for employment with the United Nations under a contract which expires in October 1964. They temporarily returned to Russia in June 1962 to enable Mrs. Egorova to receive medical treatment. She there underwent two major operations in August 1962. Mr. Egorov returned to the United States in September and his wife in November, 1962. Mrs. Egorova recently had arranged to return to Russia at the end of July 1963 for further medical treatment. They have a twelve-year old child, who presently resides in Moscow (Pet. App. 18-21).

The Soviet government contends that petitioners are entitled to diplomatic immunity, and it has made such a claim to the United States, which rejected it. At all times since their arrest the Soviet government

has publicly associated itself with the petitioners. It has assisted them in securing counsel and has made representations to the United Nations in their behalf; and its government officials have attended all judicial proceedings thus far (Pet. 12).

At the hearing before the district court the Assistant United States Attorney also referred to two specific acts set forth in the complaint. He stated that on June 6, 1963, a known Russian agent (other than these petitioners) was observed going to a place known as a "drop" in Astoria, Long Island, where he placed in a magnetic container information relating to rocket launching sites, which information he had obtained at the request of his Soviet superiors. Shortly thereafter, the petitioner Egorov and his wife were seen to approach the "drop" point, where Mr. Egorov took the container and handed it over to his wife, who in turn put it in her pocketbook. He stated that on June 15, 1963, Mr. Egorov and his wife were seen to hide a magnetic container at another "drop" point, this time at Woodside, Long Island, and that shortly thereafter one of the co-defendants was seen to approach this point and take the container away with him (Pet. App. 24; Complaint p. 4).

ARGUMENT

Petitioners' constitutional claim is plainly without merit. The Eighth Amendment, prohibiting "excessive bail," gives no absolute right to bail in all circumstances. *Carlson* v. *Landon*, 342 U.S. 524. Nor does the exercise of discretion by the district court in

denying bail, affirmed by the court of appeals, warrant review by this Court.

Rule 46(a)(1) of the Federal Rules of Criminal Procedure provides that a person arrested for a capital offense "may be admitted to bail by any court or judge authorized by law to do so in the exercise of discretion, giving due weight to the evidence and to the nature and circumstances of the offense." Petitioners are Soviet citizens who have been indicted for the extremely serious crime of conspiring to transmit to the Soviet Union vital information relating to this country's national defense. The alleged conspiracy has been in existence for more than six years, and the petitioners directly participated in two overt acts in furtherance of the conspiracy committed during the month before the indictment was returned. The Soviet government claims diplomatic immunity for petitioners, who are only temporarily residents of this country, and it has shown considerable interest in the case.

In these circumstances, we think it is clear that petitioners manifestly are poor bail risks. Their primary loyalties and ties obviously are to Russia, where their son resides, to which they returned for several months last year and to which Mrs. Egorova was planning to return for medical treatment, and under whose diplomatic passport they originally entered this country. They would have the strongest reasons to flee the country and escape prosecution under this indictment. If they should return to the Soviet Union, it would be wholly consistent with the latter's claim that they have diplomatic immunity for

it to refuse to return them to face trial in this country. Moreover, there is no extradition treaty covering the crimes with which they are charged.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.

J. WALTER YEAGLEY,
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GEORGE L. FRICKER,
Attorney.

SEPTEMBER 1963.

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